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Supreme Court, U.S.
FILED

No. _____

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In The

Supreme Court of the United States

VICKI M. ROBERTS,

Petitioner,

vs.

LOS ANGELES CITY FIRE DEPARTMENT; CITY OF LOS ANGELES; LOS ANGELES DISTRICT ATTORNEY'S OFFICE; COUNTY OF LOS ANGELES; JAMES H. THORNTON; MICHAEL J. CABRAL; AND GIL GARCETTI,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Have the abstention holdings of *Rooker v. Fidelity Trust*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983) subsumed or overruled the longstanding principle enunciated in *Allen v. McCurry*, 449 U.S. 90, 95 (1980) that a state court litigant who has been denied a full and fair hearing on a motion for suppression of evidence in the state court can seek redress in the Federal District Court?

LIST OF PARTIES

The parties to this proceeding are petitioner Vicki M. Roberts, and respondents Los Angeles City Fire Department; City of Los Angeles; Los Angeles District Attorney's Office; County of Los Angeles; James H. Thornton; Michael J. Cabral; and Gil Garcetti.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Vicki M. Roberts respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in this case filed on February 22, 2002.

OPINION BELOW

The U.S. District Court's Order is published at 86 F.Supp.2d 990. This order is reprinted in the Appendix B to this Petition at App. 7-14. The U.S. Court of Appeals' Memorandum (per Fletcher, B., Nelson, D., and McKeown) affirming is not published, and is reprinted in the Appendix A at App. 1-6. The U.S. Court of Appeals Order denying rehearing and rehearing en banc and staying mandate is not published, and is set forth in the Appendix C at App. 15-16. There were no written opinions from the California Court of Appeal and California Supreme Court.

STATEMENT OF JURISDICTION

The judgment of the U.S. Court of Appeals for the Ninth Circuit was filed on February 22, 2002. A petition for rehearing and rehearing en banc was timely filed, and denied on May 1, 2002. This petition has been filed within ninety (90) days of the final Order Denying Rehearing.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), 28 U.S.C. § 2101(c), and U.S. Sup. Ct. Rule 13.1 and 13.3.

Per U.S. Sup. Ct. Rule 10(a) and (c), this Court should grant *Certiorari* because a federal court of the last resort,

the United States Court of Appeals for the Ninth Circuit, has decided an important federal question which has not been, but should be, settled by this Court; and the lower federal courts appear to be in decisional conflict regarding the issues.

RELEVANT PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution states in *pari materia*:

> " . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . . "

42 U.S.C. § 1983 states in *pari materia*:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within

the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, . . . ".

STATEMENT OF THE CASE

Petitioner Vicki M. Roberts ("Roberts") is an attorney licensed to practice law in the States of California and New Jersey, and is a member in good standing of both jurisdictions. At the time of the initial actions by Respondents in 1998 which precipitated the underlying case, Roberts represented certain suspects in a criminal arson investigation involving multi-task force of investigators from the City of Los Angeles, the State of California, and the federal Department of Alcohol, Tobacco, and Firearms which started in or about 1995, but no charges had yet been filed in connection with said investigation.

A search warrant was issued by California Superior Court Judge William R. Pounders, which (1) was based upon an affidavit by Respondent James H. Thornton ("Thornton"), one of the lead fire investigators, that was in material part knowingly false and misleading with over twenty-four (24) false statements about Roberts; (2) was procured maliciously, in reckless disregard for the truth; and (3) was without probable cause. But for the false statements contained in the Thornton affidavit, no warrant would or should have issued.

Pursuant to said search warrant, Roberts' home was raided on the morning of December 3, 1998 using a battering ram-type device to break down the front door, and

surrounded by approximately eighteen (18) law enforcement personnel, including Respondent Deputy District Attorney Michael J. Cabral ("Cabral"). In total, approximately forty-five (45) banker boxes of material were seized, including privileged materials and work product concerning Roberts' representation as criminal defense counsel on a pending case being prosecuted by Respondent Los Angeles District Attorney's Office ("DA") as well as the arson investigation referenced herein.

Roberts sought to traverse the warrant based on the Thornton affidavit and was denied a full and fair hearing to which she was entitled. In December 1998, Judge Pounders granted a *Franks v. Delaware*[1] hearing, having found that Roberts had met her burden with respect to her entitlement to said hearing. Roberts was therefore entitled to and the state court was obliged to give Roberts a full and fair hearing, but Roberts was denied a full and fair hearing in that:

a. Roberts was denied the right to proffer witnesses and testimony evidencing the falsity of the many false statements made in the Thornton affidavit;

b. Roberts was inappropriately and wrongfully limited in her cross-examination of Thornton;

c. The state court failed to hold the requisite in camera hearing with Roberts and her counsel regarding the privileged communications and work product of Roberts, failed to permit the requisite objections concerning the privileged materials, and failed to apply the proper standard with respect to handing over said privileged materials, in

[1] 438 U.S. 154 (1978).

that the court failed to require the Respondents to show a *prima facie* case for a crime or a fraud before being entitled to any of the privileged materials (*See Cal. Evidence Code* § 956); and

d. The state court exhibited actual bias against Roberts by making statements that were sexist, insulting, reprimanding, harsh, and patronizing.

In essence, the state court hearing was a flawed hearing, which, but for said flaws, would have resulted in a finding of lack of probable cause for the issuance of the search warrant and a suppression of all materials seized.

On or about March 16, 1999, Roberts timely filed a Statement of Disqualification and Supplement against Judge Pounders, which was struck by Judge Pounders. Roberts filed petitions for writ of mandate in the California Court of Appeal and California Supreme Court which were summarily denied without comment.

On December 1, 1999, Roberts filed her Complaint in U.S. District Court. The Complaint alleged that Roberts was entitled to a full and fair hearing which would result in a quashing of the warrant, suppression of the materials seized and return of said materials to Roberts. The Complaint sought injunctive relief so ordering and an order that all rulings of the state court should be vacated, but did not ask for damages.

The Respondents made motions to dismiss the Complaint on various grounds, none of which mentioned the *Rooker-Feldman* doctrine. On February 18, 2000, the District Court, *sua sponte*, ruled that *Rooker-Feldman* applied and issued its order dismissing Roberts' Complaint in its entirety and final judgement thereto. On March 24,

2000, Roberts filed her Notice of Appeal to the Court of Appeals for the Ninth Circuit.

On or about June 15, 2000, three months after filing the Notice of Appeal, Roberts discovered by accident, that another search warrant had been issued by Judge Pounders on November 19, 1999 against Roberts' various bank accounts. This search warrant was issued by Judge Pounders eight months after Roberts had filed her Statement of Disqualification against him. On June 19, 2000, Roberts filed a motion to disqualify Judge Pounders as to the bank accounts' search warrant on the grounds of bias against Roberts. Judge Pounders failed to timely respond.

Judge Pounders told Judge Fidler, who was the presiding California Superior Court judge on this disqualification motion, that he did not respond because he was out of town on vacation. Said statement was related to the parties by Judge Fidler in open court on July 14, 2000. The record, however, showed that for an entire week after being served Roberts' disqualification motion, Judge Pounders was present in court and issued thirty seven (37) pages of minute orders, contrary to his statement to Judge Fidler. Again this indicated the bias that Judge Pounder exhibited against Roberts, which was one of the basis for finding that Roberts did not get a full and fair *Franks* hearing alleged in her Complaint. Judge Fidler found that Roberts' motion well-taken under California Code of Civil Procedure § 170.3(c)(4) and Judge Pounders was disqualified from further matters concerning Roberts.

On February 22, 2002, the Court of Appeals for the Ninth Circuit affirmed the ruling of the District Court dismissing Roberts' federal Complaint. On March 22, 2002, Roberts filed a motion for Panel Rehearing and Rehearing *En Banc*. The Court of Appeals denied the rehearing

motion on May 1, 2002. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

It is necessary to determine whether a state court litigant who has been denied a full and fair hearing on a motion for suppression of evidence in the state courts can seek redress in the Federal District Court or is he/she prevented from doing so because of *Rooker v. Fidelity Trust*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983) (hereinafter *Rooker-Feldman* or *Rooker-Feldman* doctrine)

This issue is of national importance because many habeas corpus petitioners and federal civil rights plaintiffs have relied and are still relying upon the holdings of *Stone v. Powell*, 428 U.S. 465, 494 (1972) and *Allen v. McCurry*, 490 U.S. 90, 95 (1980) to attack Fourth Amendment violations in the federal courts when they were denied full and fair hearings in the state courts.

The subject decision by the United States Court of Appeals for the Ninth Circuit represents the overruling or subsuming of this Court's decisions in *Stone v. Powell*, *supra* and *Allen v. McCurry*, *supra* based upon the novel and unique interpretation of the *Rooker-Feldman* doctrine by the United States Court of Appeals for the Ninth Circuit.

LEGAL DISCUSSION

I. A LITIGANT WHO DOES NOT RECEIVE A FULL AND FAIR HEARING ON A CONSTITUTIONAL CLAIM IN THE STATE COURT MAY SEEK RELIEF IN THE DISTRICT COURT

The United States Court of Appeals for the Ninth Circuit in *Robinson v. Ariyoshi*, 753 F.2d 1468, 1472 (9th Cir. 1985) made a ruling which should have settled the issue in the District Court, but which now conflicts with its decision in the instant case.

> With reference to a res judicata bar against these claims, the question becomes more complex. It is settled that "horizontal" appeals will not lie to the United States District Courts to overturn allegedly erroneous decisions on federal constitutional questions by the highest court of a state. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923). *See also District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 1314, 75 L.Ed.2d 206 (1983). However, Rooker made it clear that the only constitutional questions arising from a state proceeding on which the Supreme Court considered itself to be the final arbiter, were those that "actually arose in the cause" **in which a full hearing was held** and where the judgment was responsive to the issues. *263 U.S. at 415, 44 S.Ct. at 150.* Otherwise, **if *Rooker* were a blanket jurisdictional bar precluding the litigation of claims even if there had been no actual state court opportunity to litigate them, *Rooker* would swallow the "full and fair opportunity to litigate" limitation to res judicata clearly established elsewhere by the Supreme**

Court. *See e.g., Allen v. McCurry,* 449 U.S. 90, 95, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980). (Emphasis supplied)

Consistent with that analysis, we have read *Rooker* not as a jurisdictional barrier but as an application of res judicata. See e.g., *Williams v. Washington,* 554 F.2d 369, 371 (9th Cir.1977); *Hutcherson v. Lehtin,* 485 F.2d 567, 569 (9th Cir.1973); *Francisco Enterprises, Inc. v. Kirby,* 482 F.2d 481, 485 (9th Cir.1973), *cert. denied,* 415 U.S. 916, 94 S.Ct. 1413, 39 L.Ed.2d 471 (1974). The Supreme Court, in one of two majority opinions which cited *Rooker* did so in a discussion of res judicata. *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 282-83, 66 S.Ct. 1105, 1109-10, 90 L.Ed. 1230 (1946). The other, more recent, Supreme Court majority citation of *Rooker* has been in a jurisdiction context, with acknowledgment of the res judicata implications. *Feldman,* 460 U.S. at 476, 103 S.Ct. at 1311. In *Feldman,* the Supreme Court held that where allegations underlying a state's highest court's final judicial decision are "inextricably intertwined" with issues presented to a federal court, the federal court has no jurisdiction over those issues, even if those challenges included constitutional claims. *Id.* at 486, 103 S.Ct. at 1316-17.

Faced with the task of deciding our power to review constitutional issues which arise from a state court proceeding, **we view the res judicata requirement of full and fair opportunity to litigate, and the *Feldman* "inextricably intertwined" barrier to federal jurisdiction as two sides of the same coin.** Under the rubric of either "jurisdiction" or "res judicata," the crux of the question is whether

> there has already been actual consideration of and a decision on the issue presented. **If consideration and decision have been accomplished**, action in federal court is an impermissible "appeal" from the state court decision. *See Reynolds v. Georgia,* 640 F.2d 702, 705-06 n.2 (5th Cir.) *cert. denied,* 454 U.S. 865, 102 S.Ct. 326, 70 L.Ed.2d 165 (1981). **If no consideration has been given, or any decision on the matter is ambiguous, it is unlikely that the issues presented to the state high court and to the federal court are so "inextricably intertwined" that the federal court cannot take jurisdiction. Nor is it likely that there will have been a full enough and fair enough opportunity for litigation to warrant the claim preclusive effect of res judicata.** (Emphasis supplied)

A reading of the above quotation reveals that the United States Court of Appeals for the Ninth Circuit in considering *Rooker-Feldman, supra,* collateral estoppel and res judicata has ruled that an essential element of *Rooker-Feldman, supra,* was a full and fair hearing which the Appellant did not receive in the State Court or the District Court.

A reading of the Roberts' Complaint in the District Court reveals that the relief sought is based upon Roberts not receiving a full and fair hearing in the State Court. (**See Appendix D at App. 17-32**). A reading of the District Court's Order, which is contained in *Roberts v. LAFD*, 86 F.Supp.2d 990 (C.D. Cal. 2000) at page 992 makes it clear that the District Court was aware of Appellant's contentions in her Complaint. (**See Appendix B at App. 8-10**).

In *Rooker v. Fidelity, supra,* at 415, the Supreme Court made the following statement explaining a lack of federal jurisdiction if there has been among other things a full and fair hearing as follows:

> It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit had jurisdiction of both the subject-matter and the parties, **that a full and fair hearing was had therein**, that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the state on an appeal by the plaintiffs. (Emphasis supplied)

In a case similar to the case at bar, *Allen v. McCurry*, 449 U.S. 90, 91 (1980), Mr. Justice Stewart, who delivered the opinion of the Court began his opinion as follows:

> At a hearing before his criminal trial in a Missouri court, the respondent, Willie McCurry, invoked the Fourth and Fourteenth Amendments to suppress evidence that had been seized by the police. The trial court denied the suppression motion in part, and McCurry was subsequently convicted after a jury trial. The conviction was later affirmed on appeal. (case cited). **Because he did not assert that the state courts had denied him a "full and fair opportunity" to litigate his search and seizure claim, McCurry was barred by this Court's decision in *Stone v. Powell*, 428 U.S. 465 * * * from seeking a writ of habeas corpus in a federal district court.** Nevertheless, he sought federal-court redress for the alleged constitutional violation by bringing a damages suit under 42 U.S.C. § 1983 who had entered his home and seized the evidence in his possession. We granted certiorari to consider whether the unavailability

> of federal habeas corpus prevented the police officers from raising state court's partial rejection of McCurry's constitutional claim as a collateral estoppel defense to the § 1983 suit against them for damages. (Emphasis supplied).

This was the situation before the District Court in the case at bar, except for one vital fact. In *McCurry, supra,* there was no contention by McCurry that he did not receive a full and fair hearing. In this case that very contention was the heart of Appellant's § 1983 complaint in the District Court. This Court in *McCurry* rested its decision on the related concepts of res judicata and collateral estoppel which it defined in simple terms, *id.* at 449 U.S. 94. After deciding that the doctrine of collateral estoppel would defeat McCurry's claim the Court, at 449 U.S. at page 95, recognized there was a very important exception to the application of res judicata and collateral estoppel which applied to the case at bar as follows:

> **But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" litigate the issue in the earlier case.** (Authority cited) (emphasis supplied).

In its memorandum the United States Court of Appeals for the Ninth Circuit cited the case of *Johnson v. DeGrandy*, 512 U.S. 997, 1005-1006 (1994) for the proposition that the *Rooker-Feldman* doctrine prohibits lower federal courts from reviewing final decisions of state courts. (**See Appendix A at App. 3**). In the cited case at 512 U.S. 1005, the Supreme Court made it clear that in order to have a res judicata or collateral estoppel effect the

party sought to be bound by either of those principals there must have been a decision following "full and fair opportunity to litigate" in the state court, which the appellant here did not receive.

That Court also cited its recent decision in *Doe & Associates Law Offices v. Napolitano*, 252 F.3d 1026 (9th Cir. 2001) as "dispositive" (**see Appendix A at App. 5-6**) and it is similar in most aspects with one very important exception. That exception is that the Appellant in *Doe & Associates, supra,* made no claim that it was deprived of a full and fair opportunity to litigate its claims.

CONCLUSION

For the foregoing reasons, Petitioner prays for a writ of certiorari to issue to the Court of Appeals for the Ninth Circuit.

Dated: July 30, 2002

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICKI M. ROBERTS, Plaintiff-Appellant, v. LOS ANGELES CITY FIRE DEPARTMENT, CITY OF LOS ANGELES, LOS ANGELES DISTRICT ATTORNEY'S OFFICE, COUNTY OF LOS ANGELES, JAMES H. THORNTON, MICHAEL J. CABRAL, GIL GARCETTI, Defendant-Appellees.	No. 00-55591 D.C. No. CV-99-12551 DDP MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding.

Argued and Submitted October 17, 2001
Pasadena, California

(Filed Feb. 22, 2002)

Before: B. FLETCHER, D. NELSON, and McKEOWN, Circuit Judges.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Attorney Vicky Roberts appeals the district court's dismissal of her claim for lack of subject matter jurisdiction. Because Ms. Roberts sought a declaration that a state superior court had erred in myriad ways, the district court concluded that the dictates of the *Rooker-Feldman* doctrine denied it jurisdiction. We have jurisdiction pursuant to 28 U.S.C. § 1291 and we affirm.

In December 1998, the Los Angeles Fire Department Arson Investigator submitted a 32-page affidavit in support of a warrant to search Ms. Roberts' residence. After the warrant's exercise, Ms. Roberts requested a hearing in California Superior Court to challenge its validity pursuant to *Franks v. Delaware,* 438 U.S. 154 (1978).[1] Specifically, Ms. Roberts alleged that the warrant issued based on an affidavit containing false and misleading statements.

Following a *Franks* hearing, Los Angeles Superior Court Judge William R. Pounders found that the warrant issued based on probable cause. Ms. Roberts petitioned the Court of Appeal for a writ of mandate or prohibition to reverse Judge Pounders' decision. Ms. Roberts' petitions included allegations that Judge Pounders exhibited bias and, as a result, that he conducted the *Franks* hearing

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[1] *Franks v. Delaware* provides that, under certain circumstances, a defendant may obtain a hearing to determine whether deliberately or recklessly false information in a supporting affidavit underpinned issuance of a search warrant. To establish entitlement to a *Franks* hearing, a defendant must make a substantial preliminary showing that: (1) the affiant made a deliberately false statement or demonstrated reckless disregard for the truth; and (2) the challenged statement(s) or omission(s) were essential to a finding of probable cause. *Franks,* 438 U.S. at 171-172.

improperly in a number of ways. The California Court of Appeal and California Supreme Court both denied the petitions without written opinions on April 16, 1999 and May 19, 1999, respectively.

Ms. Roberts filed suit under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments in federal district court in the Central District of California. In her complaint, she relates the details of the allegedly false affidavit that precipitated the search of her home. She argues that she was denied a full and fair hearing for a variety of reasons. Ms. Roberts argues that, but for the flaws she alleges, the *Franks* hearing "would have resulted in a finding of lack of probable cause for the issuance of the search warrant and a suppression and return to plaintiff of all materials seized."

The district court dismissed the case for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. The existence of subject matter jurisdiction is a question of law we review de novo. *Harden v. Roadway Package Sys., Inc.*, 249 F.3d 1137, 1140 (9th Cir. 2001).

The *Rooker-Feldman* doctrine prohibits lower federal courts from reviewing final decisions of state courts. *Johnson v. DeGrandy*, 512 U.S. 997, 1005-1006 (1994). A losing party in a state action may not seek to vindicate any alleged violation of federal constitutional rights that were "inextricably intertwined" with the state court proceedings. *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983). If the federal district court may only grant Ms. Roberts the declaratory and injunctive relief she seeks by determining that the *Franks* hearing was flawed, the judge was biased, and there was not

probable cause to support the search warrant, it may not exercise subject matter jurisdiction over the case.

Ms. Roberts' complaint aims at the heart of the state court proceeding. In her federal complaint, Ms. Roberts demands injunctive relief based on unreasonable search and seizure. She contends, among other things, that "all rulings of the state court should be vacated. Further . . . this entire investigative team is tainted and plaintiff seeks injunctive relief so ordering the removal of the entire team from the investigation."

Ms. Roberts' request for declaratory relief seeks to disembowel her entire state court proceeding and all decisions and ramifications flowing therefrom. Specifically, Ms. Roberts demands:

> a judicial declaration finding that the affidavit in support of the search warrant against plaintiff's residence was false, made in reckless disregard for the truth, and perjurious, and did not support the probable cause required for the issuance of said warrant, that the state court failed to conduct a full and fair hearing in connection with determining probable cause and the crime/fraud exception, that the state court was biased against her which deprived her of a full and fair hearing, and that the state court completely and inadequately failed to follow the law with respect to mandatory procedure concerning the handling of privileged materials as well as materials that exceeded the scope of the warrant and that the state court acted extra-judicially in releasing the seized materials once the Statement of Disqualification [against the state court judge] was filed.

Ms. Roberts makes exactly the kinds of "inextricably intertwined" claims that *Rooker-Feldman* prohibits.

She also contends that, because her request for writs of mandate or prohibition were summarily denied without comment by both the California Court of Appeal and the California Supreme Court, she has been denied a hearing to which she is entitled. Here again she is wrong.

Our recent decision in *Doe & Associates Law Offices v. Napolitano,* 252 F.3d 1026 (9th Cir. 2001) is dispositive. In *Doe & Associates,* the federal district court denied jurisdiction over Doe's constitutional challenge to a state grand jury subpoena duces tecum apparently issued as part of an Attorney General review of his law firm's billing practices. *Id.* at 1027-1028. Just as Ms. Roberts contends with respect to the materials seized from her home, Doe argued the subpoena would compel disclosure of confidential client information. The state Superior Court denied Doe's motion to quash part of the subpoena; because the order was non-final and interlocutory – like that issued by the Superior Court against Ms. Roberts – Doe had to pursue relief through an extraordinary writ. As in Ms. Roberts' case, the Arizona Court of Appeals declined to hear the petition on its merits, and the Arizona Supreme Court declined to entertain the petition for review. Neither issued an opinion. After striking out in the state courts, Doe filed a federal claim, alleging Fourth Amendment violations and deprivation of his clients' constitutional privacy rights. Like Roberts, he sought declaratory and injunctive relief to prevent enforcement of the subpoena. We held that we lacked jurisdiction to hear Doe's claim. Considering whether the claims were "inextricably intertwined" within the meaning of *Rooker-Feldman,* we observed that:

> the district court could not have found in favor of Doe on the constitutional claims without holding

> that the state court had erred in denying Doe's renewed motion to quash. Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues presented to both courts are inextricably intertwined.

Id. at 1030.

Both procedurally and substantively Ms. Roberts' case is virtually indistinguishable from *Doe & Associates*. It is clear from the face of her complaint that she could not have the relief she seeks unless the district court expressly held that the state court was wrong in a wide assortment of ways pertaining to her *Franks* hearing. This is exactly the kind of claim *Rooker-Feldman* will not tolerate.

AFFIRMED.

APPENDIX B

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI M. ROBERTS, Plaintiff, v. LOS ANGELES CITY FIRE DEPARTMENT; et al., Defendants.	Case No. CV 99-12551 DDP (MANx) **ORDER GRANTING MOTION TO DISMISS** [Motion filed on 1/6/00] (Filed Feb. 16, 2000)

This matter comes before the Court on a motion to dismiss by the defendants County of Los Angeles, Los Angeles District Attorney's Office, Michael Cabral, and Gil Garcetti (hereinafter the "County defendants"). After reviewing and considering the materials submitted by the parties and hearing oral argument, the Court finds that the complaint should be dismissed on the grounds that it is barred by the Rooker-Feldman abstention doctrine.

BACKGROUND

The plaintiff, Vicki M. Roberts, is an attorney who represents "certain suspects in an on-going criminal

investigation." (Compl. at ¶ 1.) On December 3, 1998, Roberts alleges that her home was raided by the police pursuant to a search warrant. (*See id.* at 2.) The police allege that they were conducting a search related to the on going investigation of an arson for profit scheme, in which Roberts is a suspect but has not been charged. (*See id.* at 5; Mot. at 6.)

Roberts alleges that investigators recovered and removed approximately forty-five banker boxes of materials and documents from her home. Roberts further alleges that these documents include materials protected by the attorney-client and work product privileges. (*See* Compl. at ¶ 18.)

Roberts asserted that the search warrant was based on false and misleading statements, and she requested a hearing to challenge the validity of the warrant. (*See id.* at 8.) She was granted a hearing pursuant to *Franks v. Delaware,* 438 U.S. 154, (1978) ("*Franks*" hearing). At the hearing, Roberts alleged that defendant James Thornton proffered a false declaration in order to obtain the warrant. (*See* Compl. at 7; Mot. at 7.)

Roberts alleges that the state court that conducted the *Franks* hearing denied her a full and fair hearing by: (1) denying her the right to offer testimony regarding the false statements made in the search warrant affidavit, and limiting her cross-examination of Thornton; (2) failing to conduct any hearing on the crime-fraud exception or an in-camera review of the documents prior to providing the defendants with privileged communications; (3) failing to review and make records of all of the seized materials, and failing to remove those documents outside the scope of

the warrant before delivering the documents to the defendants; (4) ruling contrary to the clear evidence presented and not considering evidence before the court; (5) refusing to permit the plaintiff to introduce evidence that proves that the defendants knew that their allegations were false; (6) making misstatements on the record as to the state court's review of the materials; and (7) relying improperly on an eviscerated search warrant affidavit. (*See* Compl. at ¶ 21.)

The plaintiff also contends that the state trial court exhibited actual bias toward her, including but not limited to gender bias. (*See id.* at 12.)

The California trial court upheld the warrant in the *Franks* hearing and Roberts appealed the ruling by way of a Petition for Writ of Mandate and/or Prohibition or Other Extraordinary Relief. (*See* Mot. at 7-8.) Both the California Court of Appeals and the California Supreme Court denied the plaintiff's writ of mandate-prohibition. (*See id.* at 8, 24-26; *Roberts v. Superior Ct.*, Appellate Case No. B 130489.)

Roberts has also filed two state court lawsuits related to these claims. The first suit was filed on October 7, 1999, and the second on November 1, 1999. (*See id.* at 29, 61.) The County defendants filed a demur in both of these cases. The trial court sustained the County defendants' demur in the first case, leaving twenty days for the plaintiff to amend her complaint regarding the injunctive relief claim. The hearing on the demur in the second case was continued until January 19, 2000. (*See* Mot. at 9-10.)

Roberts filed the instant action on December 1, 1999, alleging violations of the Fourth and Fourteenth Amendments to the United States Constitution and seeking both

declaratory and injunctive relief. Specifically, Roberts seeks "a full and fair hearing which will result in the quashing of the warrant [and] suppression of the materials seized," a ruling that the state court's decision is vacated, removal of the arson investigative team, and a judicial declaration that the search of her house was unconstitutional. (Compl. at ¶¶ 32-41.)

In the present motion, the County defendants move to dismiss the action on the grounds that Roberts' claims are barred by res judicata, the Eleventh Amendment, and prosecutorial immunity.

DISCUSSION

A. Legal Standard

The County defendants move the Court to dismiss the plaintiff's thirty-eighth claim pursuant to Federal Rule of Civil Procedure 12(b). Dismissal under Rule 12(b)(6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the complaint. *Newman v. Universal Pictures,* 813 F.2d 1519, 1521-22 (9th Cir. 1987). The court must view all allegations in the complaint in the light most favorable to the non-movant and must accept all material allegations – as well as any reasonable inferences to be drawn from them – as true. *North Star Int'l v. Arizona Corp. Comm'n,* 720 F.2d 578, 581 (9th Cir. 1983).

B. Analysis

In this motion, the County defendants move to dismiss on the grounds that the plaintiff's claims are barred by the doctrine of res judicata, the Eleventh Amendment,

and prosecutorial immunity. However, as a preliminary matter, the Court must address the issue of subject matter jurisdiction. The United States District Court is a court of original jurisdiction, and therefore does not have jurisdiction to conduct appellate review of state court proceedings. *See Worldwide Church of God v. McNair,* 805 F.2d 888, 890 (9th Cir. 1986). Thus, a district court cannot review state court decisions "in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 486, (1983). Instead, "litigants who feel a state proceeding has violated their constitutional rights must appeal that decision through their state courts and thence to the Supreme Court." *Young v. Murphy,* 90 F.3d 1225, 1230 (7th Cir. 1996).

This principle has come to be known as the "*Rooker-Feldman*" doctrine. *See* Schwarzer, et al., *Federal Civil Procedure Before Trial,* ¶ 2:1380 at 2E-85 (1999) (referring to this limitation on review of state court judgments as "Rooker-Feldman" doctrine). The rationale behind the doctrine is that state courts are as competent as federal courts at ruling on issues of federal and constitutional law. *See Worldwide Church of God,* 805 F.2d at 891. Because the Rooker-Feldman doctrine relates to the court's subject matter jurisdiction, the court may raise the issue sua sponte. *See id.* at 890 (citing *Solano v. Beilby,* 761 F.2d 1369, 1370 (9th Cir. 1985)); *see also Young,* 90 F.3d at 1230 (raising Rooker-Feldman doctrine sua sponte).

The Rooker-Feldman doctrine applies when a federal plaintiff was a party to a state court action and is essentially challenging an adverse decision by the state court. *See* Schwarzer, *supra,* ¶ 2:1388 at 2E-87. The Ninth

Circuit has held that the doctrine bars review of non-final as well as final state court decisions. *See Dubinka v. Judges of Superior Ct.*, 23 F.3d 218, 221 (9th Cir. 1994).

Although Rooker-Feldman prevents the Court from reviewing the substance of a state court's decision, the Court "does have jurisdiction over a 'general' constitutional challenge that does not require review of a final state court decision in a particular case." *Worldwide Church of God,* 805 F.2d at 891. Thus, "[t]he fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Young,* 90 F.3d at 1231 (citations and internal quotations omitted). For example, a federal district court may have jurisdiction to review the constitutionality of a state law, but not the constitutionality of a state court's application of that law in a specific case. *See* Schwarzer, *supra,* ¶ 2:1382 at 2E-86.

In the present matter, Roberts' two causes of action and her prayer for relief appear "inextricably intertwined" with the state court's *Franks* hearing regarding the validity of the search warrant. *See Feldman,* 460 U.S. at 482 n. 16. The plaintiff claims that her Fourth Amendment rights were violated because the police conducted a search pursuant to an invalid warrant. The plaintiff also claims that her procedural due process rights were violated when the state court failed to properly find that the warrant lacked probable cause. The plaintiff is seeking injunctive relief which would provide her with "a full and fair hearing which will result in the quashing of the warrant and suppression and return of the seized materials." (Compl. at ¶¶ 16-17.) Additionally, she is seeking "a finding vacating the orders of the state court for lack of

probable cause, bias, and lack of jurisdiction." (*Id.*) All of these requests are in essence an attempt by Roberts to obtain appellate review of the state court's *Franks* hearing.

The plaintiff asserts that Rooker-Feldman only applies to collateral attacks on civil judgments, and that the doctrine does not bar subsequent civil cases in federal court that challenge the denial of due process by a state court in a criminal proceeding. (*See* Supp. P & A's in Opp. to Mot. to Dismiss at 6-7.) However, the Rooker-Feldman doctrine is not so limited. *See Datz v. Kilgore,* 51 F.3d 252, 253-54 (11th Cir. 1995) (dismissing § 1983 case that challenged the constitutionality of car search under Rooker-Feldman doctrine).[1]

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[1] The plaintiff's supplemental brief cites *Young* for the proposition that Rooker-Feldman does not apply when the initial state court proceeding was criminal rather than civil. (*See* Supp. P & A's in Opp. to Mot. to Dismiss at 6-7.) However, *Young* does not stand for that proposition. In *Young,* the Seventh Circuit stated as follows:

> [The Rooker-Feldman] doctrine articulates the limitations on the district court's power to review state court civil proceedings . . . Beyond the limited authority to examine state judicial proceedings pursuant to habeas corpus review of certain custodial situations, . . . district courts have no authority to review the proceedings or final judgments of state courts.

Young, 90 F.3d at 1230. Thus, the *Young* court stated that although Rooker-Feldman bars federal review of *most* final state court proceedings, it does not bar federal review of state court criminal proceedings that are brought by petition for writ of habeas corpus.

CONCLUSION

Therefore, as set forth above, the Court finds that the plaintiff's claims are barred by the Rooker-Feldman doctrine.

Because the Court is dismissing the complaint pursuant to the Rooker-Feldman doctrine, the Court need not address the defendant's argument that the case should be dismissed on the grounds of res judicata, the Eleventh Amendment, and prosecutorial immunity.

IT IS SO ORDERED.

Dated: 2-16-00

/s/ Dean D. Pregerson
DEAN D. PREGERSON
United States
District Judge

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICKI M. ROBERTS, Plaintiff-Appellant, v. LOS ANGELES CITY FIRE DEPARTMENT, CITY OF LOS ANGELES, LOS ANGELES DISTRICT ATTORNEY'S OFFICE, COUNTY OF LOS ANGELES, JAMES H. THORNTON, MICHAEL J. CABRAL, GIL GARCETTI, Defendant-Appellees.	No. 00-55591 D.C. No. CV99-12551 DDP ORDER

(Filed May 1, 2002)

Before: B. FLETCHER, D. NELSON, and MCKEOWN, Circuit Judges.

The panel has unanimously voted to deny the petition for rehearing. Judge McKeown voted to deny the petition for rehearing en banc, and Judges B. Fletcher and D. Nelson so recommended.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the petition for rehearing en banc is rejected.

APPENDIX D

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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI M. ROBERTS, Plaintiff, vs. LOS ANGELES CITY FIRE DEPARTMENT; CITY OF LOS ANGELES; LOS ANGELES DISTRICT ATTORNEYS OFFICE; COUNTY OF LOS ANGELES; JAMES H. THORNTON; MICHAEL J. CABRAL, GIL GARCETTI, Defendants.	CASE NO.: 99-12551 DDP (MANx) COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF FOR DENIAL OF DUE PROCESS AND CIVIL RIGHTS [4TH and 14th AMENDMENTS, 42 USC 1983, 28 USC 2201] (Filed Dec. 1, 1999)

INTRODUCTORY STATEMENT

1. Plaintiff is an individual residing in Los Angeles, California, and is duly licensed to practice law in the States of California and New Jersey, and is a member in good standing of both jurisdictions. Plaintiff represents certain suspects in an on-going criminal investigation that involves investigators from local, state, and federal agencies. Plaintiff was wrongfully labeled a suspect by defendants in an alleged arson-for-profit scheme, which said

investigation was initiated, upon information and belief, in or about 1995, and which, as stated above, is on-going. Upon information and belief, no charges have been filed in connection with said investigation, which includes a multi-task force of state and city investigators as well as investigator(s) with the Department of Alcohol, Tobacco, and Firearms ("ATF").

2. Pursuant to a search warrant issued based upon an affidavit which in material part was knowingly false and misleading, on December 3, 1998, plaintiff's home was searched and numerous documents and other things were taken. Said residence is located at 2620 S. Bentley Avenue, Los Angeles, California 90064. In total, approximately 45 banker boxes of material were seized. Attached hereto as Exhibit 1 is a true and correct copy of the inventory list concerning said seized materials that was provided to plaintiff by one of the lead investigators, Susan Holden, Special Agent, ATF. Defendants violated plaintiff's constitutionally protected rights to be secure from unreasonable search and seizure and to enjoy the due process of law. Plaintiff sought to traverse the warrant based on said affidavit and was denied a full and fair hearing to which she was entitled. The state court showed actual bias against plaintiff, said bias which included but was not limited to gender bias.

3. This action is authorized by, and brought pursuant to, 42 U.S.C. Section 1983, 28 U.S.C. 2201, and the 4th and 14th Amendments to the United States Constitution.

JURISDICTION

4. Jurisdiction of this action is conferred upon this Court by 28 U.S.C. Sections 1331 and 1343(3) as this action is

one arising under the United States Constitution and other federal laws providing remedies for deprivation of the rights and privileges of citizens of the United States.

5. Venue is appropriate in this Court pursuant to 28 U.S.C. 1391(b), as the actions giving rise to this proceeding all occurred within this division of this judicial district.

PARTIES

6. Plaintiff is an individual residing in Los Angeles, California, and is duly licensed to practice law in the States of California and New Jersey, and is a member in good standing of both jurisdictions. Plaintiff represents certain suspects in an on-going criminal investigation that involves investigators from local, state, and federal agencies.

7. Defendant Los Angeles City Fire Department (hereinafter "LACFD") is, and all times material hereto, was, an agency of the City of Los Angeles operating within the city and county of Los Angeles.

8. Defendant City of Los Angeles (hereinafter "City") is, and all times material hereto, was, a municipal government operating within the County of Los Angeles.

9. Defendant Los Angeles District Attorneys Office (hereinafter "DA") is, and all times material hereto, was, an agency of the County of Los Angeles operating within the city and county of Los Angeles.

10. Defendant County of Los Angeles (hereinafter "County") is, and all times material hereto, was, a municipal government operating within the State of California, County of Los Angeles.

11. Defendant James H. Thornton (hereinafter "Thornton") is an individual residing in the County of Los Angeles and is, and at all material times was, an arson investigator with the Los Angeles City Fire Department, employed by the City of Los Angeles. Defendant Thornton was on duty, within the course and scope of his employment, and one of the main investigators in charge with respect to the incidents alleged herein, having been assigned to the Los Angeles Arson Task Force (hereinafter "Task Force"). Said Task Force, according to said defendant, purportedly investigates arson for profit schemes and aids in the prosecution of suspects in the federal and state judicial systems.

12. Defendant Michael J. Cabral is employed as a deputy district attorney for the County of Los Angeles, and is the deputy district attorney in charge of overseeing the aforementioned investigation. Upon information and belief, Defendant Thornton and others report to defendant Cabral. Defendant Cabral also participated in the investigation in an investigative capacity.

13. Defendant Gil Garcetti is the District Attorney and the highest ranking prosecutor in the county. Defendant Garcetti is deligated the power and authority to control the conduct of the deputy district attorneys and has failed and refused to properly train, discipline, and otherwise control the conduct of the deputy district attorneys of the County of Los Angeles and its various investigators.

14. The defendants are sued in their official capacities for purposes of injunctive and ancillary relief. The individual law enforcement officers who participated directly in the incidents described here and whose names are not presently known to Plaintiff, will be renamed in their true

identities upon discovery thereof, in accordance with Federal Rule of Civil Procedure, Rule 15.

FACTUAL ALLEGATIONS

15. By way of background, at all material times plaintiff represented as counsel various entities and individuals, including but not limited to Wolfriver Holding Corporation, a Nevada Corporation.

16. Plaintiff was wrongfully labeled a suspect by defendants in an alleged arson-for-profit scheme, which said investigation was initiated, upon information and belief, in or about 1995, and which, as stated above, is on-going. Upon information and belief, no charges have been filed in connection with said investigation, which includes a multi-task force of state and city investigators as well as investigator(s) with the Department of Alcohol, Tobacco, and Firearms ("ATF").

17. Pursuant to a search warrant issued based upon an affidavit that in pertinent part was knowingly false, said affidavit of defendant James H. Thornton, on December 3, 1998, plaintiff's home was raided and searched and numerous documents and other things were taken. Said residence is located at 2620 S. Bentley Avenue, Los Angeles, California 90064. Defendants raided plaintiff's home on the morning of December 3, 1998, using a battering ram-type object to break down plaintiff's front door, destroying said door and door frame, and surrounding plaintiff's home with approximately 18 law enforcement personnel, including Deputy District Attorney Cabral and possibly his supervisor, said raid which plaintiff contends was based on the knowingly false and misleading affidavit

of defendant Thornton, which defendant Thornton procured maliciously, in reckless disregard for the truth, without probable cause, and when he knew and/or should have known that the affidavit he proffered to obtain said search warrant was false and/or misleading. Deputy District Attorney Michael J. Cabral participated in said search and seizure at plaintiff's home, where he engaged in conduct that is not prosecutorial in nature, but rather investigative. In total, approximately 45 banker boxes of materials were seized. Plaintiff contended that there was no probable cause for the issuance of said search warrant. Defendants violated plaintiff's constitutionally protected rights to be secure from unreasonable search and seizure and to enjoy the due process of law.

18. Defendants seized voluminous materials from plaintiff's home and filled 45 boxes of materials from plaintiff's home/residence, including privileged materials and work product materials, including but not limited to privileged materials and strategies concerning plaintiff's state court action, Los Angeles Superior Court Case No. SC054037 as well as matters for which plaintiff is criminal defense counsel on a pending case being prosecuted by the District Attorney's office as well as the criminal investigation referenced herein. Upon information and belief, defendants have reviewed most and/or all of said materials from plaintiff's home that remains in their possession.

19. Plaintiff sought to traverse the warrant based on the affidavit aforementioned and was denied a full and fair hearing to which she was entitled. In December 1998, the state court that issued the search warrant granted a *Franks v. Delaware* hearing after finding that the veracity of the affidavit upon which the search warrant was issued was brought into question. In connection with said hearing,

defendant Thornton continued to proffer and indeed proffered yet another false declaration, on December 15, 1998. That declaration stated falsely that Roberts received certain proceeds from a certain transaction, which was completely false.

20. Defendant Thornton's affidavit in support of the December 3, 1998 raid upon plaintiff's home and office contained almost two dozen falsities about plaintiff. Virtually everywhere in said affidavit that plaintiff's name is mentioned, the statement concerning plaintiff was false. Attached hereto as Exhibit 2 is a true and correct copy of the search warrant that was issued and attached hereto as Exihibt [sic] 3 is a true and correct copy of the portions of the Thornton affidavit in support thereof that were released to plaintiff, with markings indicating everywhere therein where the statement made about plaintiff is either false, made in reckless disregard for the truth, and/or misleading. The state court refused to grant plaintiff's request to unseal the balance of the affidavit, and it remains sealed. But for the false statements about plaintiff, there would have been no probable cause for the issuance of the search warrant, and indeed, no warrant would or should have issued. The statements made by defendant Thornton were false and known by him at the time to be false. They were made in reckless disregard for the truth.

21. After the state court granted plaintiff's request for a *Franks v. Delaware* hearing, having found that plaintiff had met her burden with respect to her entitlement to said hearing, plaintiff was therefore entitled to and the state court was obliged to give plaintiff a full and fair hearing, but plaintiff was denied a full and fair hearing in that:

a. Plaintiff was denied the right to proffer witnesses and testimony evidencing the falsity of the many false statements made by defendant Thornton in said search warrant affidavit;

b. Plaintiff was inappropriately and wrongfully limited in her cross-examination of defendant Thornton after the veracity of his affidavit in support of the search warrant was placed in issue;

c. The court abrogated its duty and obligations under the law by failing to conduct any hearing whatsoever on the crime/fraud exception of California Evidence Code section 956 prior to handing over to the defendants privileged communications and work product belonging to plaintiff, particularly in view of the fact that the burden of proof is on the prosecution to establish a *prima facie* case of fraud with particularity before being entitled to any of the privileged materials;

d. The court abrogated its duty and obligations under the law by applying an erroneous standard with respect to the crime/fraud exception, in that the court applied the same standard used for the determination of probable cause as opposed to the more stringent standard of requiring the prosecution to show a *prima facie* case of fraud;

e. The court abrogated its duty and obligations under the law by its complete mishandling of the 45 boxes of seized materials by failing to hold the requisite *in camera* hearing concerning the privileged documents, by failing to allow plaintiff's counsel to participate in any *in camera* hearing, by utterly failing to make a record of which documents it was handing over to defendants and which it was not, by failing to designate and remove those

documents that fell outside the scope of the warrant, by failing to review all of the material before handing it over to the defendants, including but not limited to an enormous amount of privileged material, material outside the scope of the warrant, and the contents of plaintiff's entire computer hard drive, by failing to make a record of which documents were extracted from where and the reasons therefor, for failing to permit the requisite objections by plaintiff or her counsel concerning the privileged material and for failing to review the privileged material *in camera* with plaintiff or her counsel so that objections could be made and preserved for the record and so that there would be a record of the rulings thereon, of which there were none;

f. The court abrogated its duty and obligations under the law by its ruling contrary to the clear evidence presented, by not considering the evidence before it, by making findings not based on the evidence or any proper inference therefrom, and/or by ruling that there was probable cause in the absence of any credible evidence thereof;

g. The court abrogated its duty and obligations under the law by refusing to permit evidence of the defendants' concealment of true facts which would have eliminated allegations or probable cause and which would have proven that defendants knew at the time they requested the warrant that said allegations were false and which evidence plaintiff obtained and requested of the court to review and consider, which request was denied, the court erroneously and bizarrely stating that it would not have made a difference;

h. The court abrogated its duty and obligations under the law by its total disregard for established legal principles;

i. The court abrogated its duty and obligations by striking a timely filed Statement of Disqualification based on actual bias, including but not limited to gender bias, and releasing the seized materials to the defendants after the Statement of Disqualification was timely filed, and in doing so the court acted extra-judicially and without authority, as once the Statement of Disqualification was filed, it effectively divested the court of jurisdiction over the matter;

j. The court abrogated its duty and obligations by making misstatements on the record as to its review of the materials;

k. The court abrogated its duty and obligations by not properly cataloging or logging the materials, indeed, the court completely and utterly failed to do so at all; and

l. The court abrogated its duty and obligations by improperly relying on an eviscerated search warrant affidavit for the finding or probable cause and crime/fraud.

22. For example, with respect to a pivotal issue concerning whether or not plaintiff solicited a Dr. Malouf to invest monies in the suspect corporate entity, one of the court's main determinants as to the issue of probable cause, Dr. Malouf clearly and unequivocally and under oath denied that plaintiff did that. Investigator Friege, one of the main investigators of this investigation, during cross-examination, testified that he could not remember or be sure as to whom it was whom defendants were claiming solicited Dr. Malouf to invest funds in said corporate

entity. And yet, despite this clear evidence that plaintiff made no such solicitation, and despite the fact that the prosecution's investigator admitted that he was not sure who made the comments in question, the state court nevertheless, contrary to the evidence or any reasonable inference therefrom, made a finding that plaintiff solicited Dr. Malouf and that that constituted the probable cause required to sustain the search warrant.

23. In essence, the state court proceeding was a procedurally flawed hearing which, but for said flaws, otherwise would have resulted in a finding of lack of probable cause for the issuance of the search warrant and a suppression and return to plaintiff of all materials seized.

24. In addition, the state court exhibited actual bias against plaintiff, including but not limited to gender bias. This bias permeated the entire proceedings and tainted them. The record was replete with evidence of this bias, including the court's vitriolic and unsubstantiated statements that plaintiff was emotional, on the verge of being irrational, and flew into rages, when in fact the record reflected that plaintiff at all times comported herself in a professional manner, as a competent, trained professional. The court made statements on the record that were sexist, reprimanding, harsh, and patronizing and clearly evidence the court's extreme irritation with plaintiff. Attached hereto as Exhibit 4 are pages 263 and 264 of the Reporter's Transcript wherein the court stated, in response to plaintiff's belief that she or her counsel could make a record concerning the court's final conclusions, that to do so would be the equivalent of criticizing him and insulting him. The state court struck plaintiff's Statement of Disqualification which alleged said bias. Owing to the bias

against plaintiff, plaintiff was deprived of her right to a full and fair hearing.

26. Attached hereto as Exhibit 5 are the excerpts of the record, pages 59 and 64 of the Reporter's Transcript, wherein the court denigrates plaintiff and shows its actual bias against plaintiff in plaintiff's absence (plaintiff was not present at the hearing wherein the court made its remarks against her.) The court referred to plaintiff as "very emotional," verging "on being irrational," "entirely inappropriate in her approach to other people," "she calls them names . . . goes into a rage at the slightest provocation," "very unprofessional," "the opposite of" her counsel. The court states that " . . . it's very bad to have somebody like that disturbing what we're trying to do here . . . ", that "I don't think it helps her cause either that I am confronted with this kind of rage," and "she goes into a rage and she calls people names. She does it inappropriately and I want it stopped." The court continued that "I'm rather upset by the language . . . and I warn you in advance, it better not happen or some people are going to be sanctioned, and you'll be very surprised at the sanctions I'll impose . . . language that is offensive . . . " However, there is no support for those remarks anywhere in the record. There were two prior hearings in this matter before the court made the aforementioned comments on January 26, 1999 and January 28, 1999. A review of the Reporter's Transcript on those prior occasions shows only that plaintiff, while ill and without counsel, comported herself in an appropriate manner as a competent, trained professional.

27. On March 17, 1999, the state court released the materials seized to the defendants, who have had in their

possession said materials since that date and continue to possess them.

FIRST CAUSE OF ACTION

INJUNCTIVE RELIEF

UNREASONABLE SEARCH AND SEIZURE

28. Plaintiff incorporates herein, as if set forth at length hereat, all of the allegations contained in this complaint.

29. Because of the infirmities stated herein, plaintiff's rights under the 4th and 14th Amendments to the United States Constitution and 42 U.S.C. Section 1983 were violated, and plaintiff was denied a full and fair hearing to which she was entitled.

30. Said full and fair hearing would have resulted in a finding of lack of probable cause, thus entitling plaintiff to suppression and return of all materials seized.

31. Plaintiff has no speedy and complete remedy at law to redress the wrongs alleged, and this suit for injunctive relief is her only means of securing adequate relief. Plaintiff is now suffering and will continue to suffer irreparable harm from defendants' conduct as well as the conduct of the state court as set forth herein unless and until enjoined by the Court.

32. Therefore, plaintiff is entitled to a full and fair hearing which will result in the quashing of the warrant, suppression of the materials seized, and return of said materials and plaintiff seeks injunctive relief so ordering.

33. Further, all rulings of the state court should be vacated.

34. Further, since this investigative team is proceeding with full knowledge of its corruptness and since this investigative team has received and reviewed the seized materials, having had all of the materials since March 17, 1999, this entire investigative team is tainted and plaintiff seeks injunctive relief so ordering the removal of the entire team from the investigation.

35. Plaintiff is entitled to this relief pursuant to the 4th and 14th Amendments and 42 U.S.C. 1983, *et. seq.*

36. Plaintiff seeks and requests attorneys [sic] fees and costs pursuant to 42 U.S.C. 1988.

SECOND CAUSE OF ACTION

DECLARATORY RELIEF

28 U.S.C. 2201

37. Plaintiff incorporates herein, as if set forth at length hereat, all of the allegations contained in this complaint.

38. Plaintiff contends that the affidavit in support of the search warrant was false and misleading and did not support the probable cause required for the issuance of said warrant, that the state court failed to conduct a full and fair hearing in connection with determining probable cause and the crime/fraud exception, that the state court was biased against her which deprived her of a full and fair hearing, that the state court completely and inadequately failed to follow the law with respect to mandatory procedure concerning the handling of privileged materials as well as materials that exceeded the scope of the warrant, and that the state court was divested of jurisdiction upon the filing of the Statement of Disqualification and

therefore the release of the seized materials subsequent to that filing was outside the jurisdiction of the court to do.

39. Upon information and belief, defendants contend that there was probable cause for the issuance of said warrant, that plaintiff received a full and fair hearing, and that the court was authorized to and acted properly in releasing the seized materials to the defendants.

40. A controvery [sic] exists between the contentions of the plaintiff and that of the defendants and therefore, pursuant to 28 U.S.C. Section 2201, plaintiff seeks a judicial determination that her contentions are correct.

41. Upon the judicial finding that plaintiff's contentions are correct, plaintiff is entitled to and plaintiff seeks a court order quashing the warrant, suppressing and returning the seized material to her possession, and the removal of the entire investigative team.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

1. For permanent and injunctive relief giving plaintiff a full and fair hearing which will result in the quashing of the warrant and suppression and return of the seized materials, permanent removal of the entire investigative team with respect to this investigation, and a finding vacating the orders of the state court for lack of probable cause, bias, and lack of jurisdiction;

2. For a judicial declaration finding that the affidavit in support of the search warrant against plaintiff's residence was false, made in reckless disregard for the truth, and

perjurious, and did not support the probable cause required for the issuance of said warrant, that the state court failed to conduct a full and fair hearing in connection with determining probable cause and the crime/fraud exception, that the state court was biased against her which deprived her of a full and fair hearing, and that the state court completely and inadequately failed to follow the law with respect to mandatory procedure concerning the handling of privileged materials as well as materials that exceeded the scope of the warrant, and that the state court acted extra-judicially in releasing the seized materials once the Statement of Disqualification was filed.

3. For attorneys fees and costs of suit; and

4. For such other and further relief as the Court deems just and proper.

Dated: November 30, 1999

LAW OFFICES OF
RICHARD G. SHERMAN

/s/ R G Sherman
By: Richard G. Sherman, Esq.
Attorney for Plaintiff